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September 23, 2011

Delivered by Email

Ms. Kirsten Walli, Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2701
Toronto ON M4P 1E4

Dear Ms. Walli:

Re: CANDAS Application - OEB File No.: EB-2011-0120

We are writing on behalf of Toronto Hydro-Electric System Limited ("THESL") in response to the letter from CANDAS' counsel dated September 22, 2011 in connection with the current procedural schedule established by the Board in the above noted proceeding.

In its letter, CANDAS indicates that it will be unable to file its reply evidence today as required pursuant to the Board's Procedural Order No. 2. CANDAS alleges that the reason it will be unable to complete its reply evidence on-time is because it has not yet received a response to all of the 677 IRs submitted to THESL (many of which were submitted late).

On August 23, 2011, THESL similarly notified the Board that CANDAS had failed to file all of its interrogatory responses by August 16, 2011 as required under Procedural Order No. 1 and THESL requested a change to the filing date for its intervenor evidence to two weeks after the last interrogatory response had been filed by CANDAS. In its letter dated August 24, 2011, CANDAS strongly objected to THESL's request for two weeks of additional time to complete its intervenor evidence because of the delayed CANDAS IR responses (the last of which was finally received over a week late on August 24, 2011).¹ CANDAS also requested that it be able to file reply evidence in this proceeding. In Procedural Order No. 2, the Board allowed only a 3 day extension to its previously established timeline by requiring all intervenors to file evidence by September 2, 2011; and the Board required that CANDAS file its reply evidence by September 23, 2011. This amounts to four days after THESL's interrogatory responses were scheduled to be filed on September 19, 2011.

In this context, THESL does not object to a reasonable variation in the timeline, provided that the timeline for CANDAS to file reply evidence is in the spirit of Procedural Order No. 2 and in particular, fairly reflects the time limitations previously imposed by the Board on parties preparing intervenor evidence, notwithstanding the late interrogatory responses filed by CANDAS. To allow CANDAS materially more than four days (after THESL's interrogatory responses are filed) to file reply evidence would be inconsistent with the spirit of Procedural Order No. 2. Further, to do so would prejudice THESL and other

¹ This does not include CANDAS' later updates to Board Staff 8 and CCC 9 on August 31, 2011 and an update to Board Staff 7 on September 1, 2011.

intervenor, and be procedurally unfair as it would provide CANDAS significant additional time to prepare and file additional evidence.

THESL continues to use its diligent best efforts to provide full and complete responses to all relevant IRs. To-date, THESL has provided responses to 264 interrogatory questions, and THESL expects to have addressed substantially all of the interrogatories by Friday September 30. In this context, THESL submits that it would be reasonable for CANDAS to file its reply evidence by no later than Wednesday October 5 (which is 5 days after THESL files its responses to interrogatories: one additional day more than what Procedural Order No. 2 provided for). THESL believes that this would represent a fair extension of time for CANDAS, particularly in consideration of its late filing of numerous IRs on September 14, 2011.

Regarding the balance of this proceeding, and subject to confirmation of the Board and Board's facilitator's availability, THESL proposes on this basis that a technical conference could be convened during the week of October 17 followed by a settlement conference.

CANDAS has proposed the week of December 12, 2011 for the hearing. However, due to THESL's existing regulatory schedule arising from other proceedings before the Board that week is unworkable for THESL. As its first alternative, THESL proposes the week of November 28, 2011 for the hearing. THESL has discussed this proposal with counsel for CANDAS, and is awaiting confirmation from CANDAS as to its availability. Otherwise, THESL is prepared to undertake the hearing as early as possible for all parties in January 2012. THESL's schedule of appearances before the Board is not yet established for that month and THESL believes that this would permit considerable flexibility on its part during that time.

In summary, while THESL does not object to rescheduling the settlement conference or oral hearing, THESL submits that any rescheduling of this proceeding should: (a) ensure that all parties are similarly situated with respect to timelines for filing evidence; and (b) be considered in conjunction with THESL's other active proceedings before the Board, including THESL's current EDR application and the ongoing suite-metering proceeding (December 7-9, 2011).

THESL has undeniably taken on the major intervenor role in this case to ensure that the Board is fully informed of all material issues in this proceeding. In light of the Board's existing schedules in respect of the above noted proceedings, THESL submits that if the Board's is to grant CANDAS' requested relief, the Board should consider the reasonable and expediting schedule proposed by THESL above.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Original Signed by J. Mark Rodger

J. Mark Rodger

copy to: Pankaj Sardana and Amanda Klein, THESL
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